joinder was held to have become proper. *Schumpert* v. *Southern Ry. Co., supra; Howe* v. *Northern Pacific R. Co.*, 30 Wash. 569, 70 Pac. 1100. It seems highly technical to make the propriety of joinder of parties depend on forms of action. The liability of master and servant is essentially joint, even if the theory of identification be rejected. It seems more joint than that of accidentally concurring tortfeasors. And the practical convenience of joinder should override technicalities.

PROXIMATE CAUSE — INTERVENING CAUSES — INTERVENTION OF NEGLIGENT ACT OF THIRD PARTY. — The defendant, a wholesale dealer in oils, supplied a retail dealer with a mixture of gasoline and kerosene instead of pure kerosene. The retail dealer discovered that the oil was not all right, and notified the defendant, who promised to take the oil back. Relying on certain tests, however, the retailer decided that two of the cans contained all kerosene, and negligently sold them to the plaintiff, who, without contributory negligence, sustained injuries from an explosion of the oil. *Held*, that the defendant is not liable. *Catlin* v. *Union Oil Co. of California*, 161 Pac. 9 (Cal.).

In most jurisdictions the liability of the vendor of an article is limited to the first vendee. *Winterbottom* v. *Wright*, 10 M. & W. 109; *Heiser* v. *Kingsland Co.*, 110 Mo. 605, 19 S. W. 630; *Kuelling* v. *Roderick Mfg. Co.*, 88 App. Div. 309, 84 N. Y. Supp. 622. *Contra*, *McPherson* v. *Buick Motor Co.*, 217 N. Y. 382, 111 N. E. 1050. See 29 HARV. L. REV. 866. But where the article is of an intrinsically dangerous nature, an exception is made, and the vendor is held liable for negligence to sub-vendees. *Bishop* v. *Weber*, 139 Mass. 411, 1 N. E. 154; *Faro* v. *Remington Arms Co.*, 67 App. Div. 414, 73 N. Y. Supp. 788. Analogous cases justify the court's assumption in the principal case that gasoline is such a dangerous article. *Standard Oil Co.* v. *Wakefield*, 102 Ga. 824, 47 S. E. 830; *Riggs* v. *Standard Oil Co.*, 130 Fed. 199. But *cf. Goodlander Mill Co.* v. *Standard Oil Co.*, 63 Fed. 400. The question of proximate cause, however, remains to be dealt with. The act of the retailer, which was unforeseeable, considering that he knew there was something wrong with the oil, intervened and destroyed the proximity of causation. Or, to look at it another way, the risk created by the defendant came to an end when the nature of the oil was discovered, and the risk from which the plaintiff suffered was a new risk, created by the negligent act of the retailer. *Hendrickson* v. *Commonwealth*, 85 Ky. 281, 3 S. W. 166; *Chaddock* v. *Plummer*, 88 Mich. 225, 50 N. W. 135; *Pittsburgh Reduction Co.* v. *Horton*, 87 Ark. 576, 113 S. W. 647.

SURETYSHIP — SURETY'S DEFENSES — EFFECT OF NOTICE BY SURETY THAT HE WILL NOT REMAIN LIABLE. — In July, 1911, the defendant became surety on a bond given by a collector to his principal. In March, 1912, the defendant notified the principal that he would no longer remain liable. Later the principal seeks to recover from the defendant for defaults of the collector. *Held*, that he may recover only for the defaults occurring before and within a reasonable time after the notice. *Ricketson* v. *Nizolte*, 98 Atl. 801 (Vt.).

For a discussion of the principles involved, see NOTES, p. 494.

TAXATION — FEDERAL CORPORATION TAX — INCOME OF A MINING COMPANY. — Corporations were formed to hold certain lands and distribute among the stockholders the proceeds of any disposition thereof. Part of the property, containing ore deposits, was leased, the lessees to pay royalties on all ore mined. Under the Corporation Tax Law of 1909 (36 STAT. AT L. 112) the companies were assessed upon the aggregate royalties as their gross income and no deductions for depreciation were made on account of the depletion of the ore deposits. Suit is brought to recover these taxes, paid under protest. *Held*, that no recovery should be allowed. *Von Baumbach* v. *Sargent Land Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 286.

The Act provides for a tax on the net income of all corporations organized for profit and engaged in business, such net income to be ascertained by deducting from the gross income all losses, expenses, etc., including a reasonable allowance for depreciation of property. See U. S. COMP. STAT., 1913, §§ 6300, 6301. It is manifestly immaterial to the character of the royalties whether the owner of a mine himself extracts and disposes of the minerals or grants to another the right to do so. So the question is whether the value of the ore as it leaves the mine is income or converted capital and hence depreciation. It is submitted that, since part of the capital of a mine is its ore, the ore subtracted represents converted capital. Hence only the market value of the product minus the value of the ore in place and the cost of mining represents income. But the decisions now run *contra*. *State* v. *Royal Mineral Association*, 156 N. W. 128 (Minn.); *Raynolds* v. *Hanna*, 55 Fed. 783; *Stratton's Independence* v. *Howbert*, 231 U. S. 399. See *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103, 114. It would follow that the ore extracted is an exhaustion of the capital and so depreciation. *United States* v. *Nipissing Mines Co.*, 202 Fed. 803. See MACHEN, THE FEDERAL CORPORATION TAX LAW, § 57. It seems significant that in the Income Tax section of the Tariff Act of 1916 and in the Income Tax Law, Congress specifically provided an allowance for the depletion of mines. See 38 STAT. AT L. 166, 167; 1915–1916 STAT. 756, 759. But there is no more reason to suppose that Congress did not intend the word "depreciation" in the former act to include such depletion than to conclude that the later acts seek to be more concise in expressly including what the former implied.

TAXATION — FRANCHISE TAX ON CORPORATION INCORPORATED IN MORE THAN ONE STATE — DUE PROCESS. — The plaintiff railroad was incorporated in and had lines running through Alabama, Tennessee, and Mississippi. Alabama levied upon corporations organized under her laws a franchise tax, based upon the total paid-up capital stock of such corporations. *Held*, the plaintiff must pay the tax. *Kansas City, M. & B. R. Co.* v. *Stiles*, 37 Sup. Ct. Rep. 58.

For a discussion of this case, see NOTES, p. 510.

TORTS — DESTRUCTION OF EVIDENCE — EFFECT OF PROBATE OF WILL. — The deceased left a will containing a legacy for the plaintiff. The defendants maliciously destroyed parts of the document with the intent to deprive the plaintiff of the legacy. As a result, a prior will was probated and the plaintiff has not enough evidence to prove the entire contents of the second will. She sues in tort alleging these facts, to which the defendants demur. *Held*, that the demurrer be overruled. *Dulin* v. *Bailey*, 90 S. E. 689 (N. C.).

It is a tort principle that an intentional injury without justification creates liability. So it would seem sufficient, to support the plaintiff's action, to proceed on general lines, asserting the loss of a legacy by the defendants' intentional wrongful act. But the same result may be reached on the theory of the violation of a specific right, *i.e.*, to evidence. For that there is an actionable right to evidence is established. *Davis* v. *Lovell*, 8 L. J. Ex. (N. S.) 152; *Lane* v. *Cole*, 12 Barb. (N. Y.) 680. On this theory it is not even necessary to prove the loss of the legacy — a substantial loss of evidence will itself support the action. *Cowling* v. *Coxe*, 18 L. J. C. P. (N. S.) 100; *Lane* v. *Cole*, *supra*. But the desired damages will certainly be the amount of the bequest. Both theories are thus faced with the necessity of proving what the probate court has apparently denied — the right to a bequest under what is claimed to be the real will of the testator. So the question arises why the decision of the probate court is not *res judicata* of the plaintiff's present contention. To procure the probate of a will requires the proof of the entire contents of the will by clear and satisfactory evidence. See *In re Hedgepeth's Will*, 150 N. C. 245, 249, 250, 63 S. E. 1025, 1026, 1027. WIGMORE, EVIDENCE, § 2106. But a legatee may fail to